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9

10 IN THE SUPERIOR COURT FOR THE
11 COUNTY OF SANTA CLARA

12 SAN JOSE POLICE OFFICERS'
13 ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATORS FOR POLICE AND
17 FIRE DEPARTMENT RETIREMENT PLAN
OF CITY OF SAN JOSE,

18 Defendants.
19

Case No. 112CV225926

ANSWER OF DEFENDANT CITY OF
SAN JOSE TO THE FIRST AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Complaint Filed: June 6, 2012

Trial Date: None Set

BY FAX

20 Defendant City of San Jose ("City") answers and responds to the First Amended
21 Complaint for Declaratory and Injunctive Relief ("First Amended Complaint") filed by Plaintiff
22 San Jose Police Officers' Association ("Plaintiff") as follows:

23 GENERAL DENIAL

24 Under the provisions of Section 431.30 of the California Code of Civil Procedure,
25 Defendant denies each and every allegation in the First Amended Complaint for Declaratory and
26 Injunctive Relief, and further denies that Plaintiff has been damaged or harmed in any way.
27 Defendant specifically avers that all rights due to Plaintiff were observed, and that there is no basis
28 to award declaratory relief, injunctive relief, or any relief whatsoever.

1 **FOR THEIR AFFIRMATIVE DEFENSES, DEFENDANT ALLEGES AS FOLLOWS:**

2 **FIRST AFFIRMATIVE DEFENSE**

3 1. Plaintiff is not entitled to injunctive relief under California Code of Civil Procedure
4 section 526. (See, e.g., Code Civ. Proc. § 526, subd. (a)(4) & (5), subd. (b)(4), (6) & (7).)

5 **SECOND AFFIRMATIVE DEFENSE**

6 2. Plaintiff is not entitled to declaratory relief under California Code of Civil
7 Procedure sections 1060 and 1061, on the ground that the City had already filed a request for
8 declaratory relief in the United States District Court for the Northern District of California, Case
9 No. C12-02904 LHK PSG, related to the validity of Measure B before implementation, such that
10 declaratory relief here is not necessary or proper under the circumstances.

11 **THIRD AFFIRMATIVE DEFENSE**

12 3. Plaintiff's causes of action, and each of them, should be stayed or dismissed on the
13 ground that they arise from the same nucleus of operative facts and circumstances currently being
14 litigated in Case No. C12-02904 LHK PSG, captioned *City of San Jose v. San Jose Police*
15 *Officers' Association, et al.*, in the United States District Court for the Northern District of
16 California.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 4. Plaintiff fails to state facts sufficient to constitute grounds for granting any relief to
19 Plaintiff under statutes upon which Plaintiff relies.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 5. Plaintiff's causes of action, and each of them, are barred on the grounds that
22 Plaintiff may not bring actions, or obtain the requested relief, directly under the specified sections
23 of the California Constitution.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 6. Plaintiff's causes of action, and each of them, are barred on the ground that if
26 Plaintiff, or any of them, had a vested right to any of the benefits alleged in the First Amended
27 Complaint (although such is not admitted hereby or herein), then any modification alleged in the
28 First Amended Complaint is reasonable, in that it is in accord with changing conditions and at the

1 same time maintains the integrity of the City's retirement system, bears some material relation to
2 the theory of a pension system and its successful operation, and to the extent they result in
3 disadvantage to Plaintiff (although such is not admitted hereby or herein) it was accompanied by
4 comparable new advantages.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 7. Plaintiff's first and six causes of action, for impairment and breach of contract, are
7 barred on the ground that no contract existed for all or some of the terms Plaintiff alleges.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 8. Plaintiff's first cause of action, for impairment of contract, is barred on the ground
10 that any impairment of Plaintiff's contractual rights (although such is not admitted hereby or
11 herein) was not substantial.

12 **NINTH AFFIRMATIVE DEFENSE**

13 9. Plaintiff's first cause of action, impairment of contract, is barred on the ground that
14 any contractual impairment (although such is not admitted hereby or herein) was reasonable and
15 necessary to serve an important public purpose, including without limitation, insuring the solvency
16 and actuarial soundness of the City's retirement plans.

17 **TENTH AFFIRMATIVE DEFENSE.**

18 10. Plaintiff's causes of action, and each of them, are barred on the ground that the
19 Plaintiffs failed to file a government claim pursuant to California Government Code § 945.4 for
20 damages sought in the prayer for relief, including "any and all actual, consequential and incidental
21 damages according to proof, including but not limited to damages that have been or made [sic] be
22 suffered by plaintiffs and petitioners..." See *Sappington v. Orange Unified School Dist.*, 119
23 Cal.App.4th 949, 955, 14 Cal.Rptr.3d 764 (2004).

24 **ELEVENTH AFFIRMATIVE DEFENSE**

25 11. Plaintiff's causes of action, and each of them, are barred on the ground that they are
26 premature and not ripe for adjudication.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 12. Plaintiff's causes of action, and each of them, are barred by the privileges and
3 immunities applicable to public agencies and employees, including without limitation California
4 Government Code §§ 815, 815.2, 815.6, 818, 818.2, 818.8, 820.4, 820.2, 820.6, 820.8, 821, and
5 822.2.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 13. Plaintiff's causes of action, and each of them, are barred on the ground that
8 Plaintiffs lack standing, in whole or in part, to assert the claims alleged in the First Amended
9 Complaint.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 14. Plaintiff's causes of action, and each of them, as pled in the First Amended
12 Complaint are uncertain.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 15. Plaintiff's causes of action, and each of them, are barred on the ground that
15 Defendant exercised reasonable diligence to discharge any mandatory duty it may have had with
16 respect to Plaintiff.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 16. Defendant's actions were based on good, sufficient, and legal cause, upon
19 reasonable grounds for belief in their justification, and were taken in good faith and without
20 malice.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 17. Plaintiff's causes of action, and each of them, are barred by the doctrine of
23 separation of powers in that a court cannot find a vested contractual right in the absence of clear
24 legislative intent to create one.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 18. Plaintiff's claims are barred by laches, waiver, estoppel, and/or the statute of
27 limitations: Cal. Civ. Proc. Code § 339 (2 years for unwritten contract); Cal. Civ. Proc. Code §
28 342 (referral to Government Claims Act); Cal. Gov. Code § 911.2 (6 mos. to 1 year to file claims);

1 Cal. Gov. Code § 945.6 (time to file after claim filed); Cal. Gov. Code § 3500 et seq. (6 mos).

2 **NINETEENTH AFFIRMATIVE DEFENSE**

3 19. Plaintiff is not entitled to the relief requested on the ground that it would compel an
4 illegal act or violation of duty by a public officer or official.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 20. Plaintiff is not entitled to the relief requested on the ground that it would compel
7 Defendant to exercise its discretionary and/or legislative power in a particular manner.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 21. Plaintiff is not entitled to the relief requested on the ground that it would abrogate
10 the City's municipal and police powers granted by the California and United States Constitutions
11 and by the San Jose City Charter.

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 22. If Defendant's current or former employees or officers or any of them made
14 promises or representations alleged in the First Amended Complaint, although such is not
15 admitted hereby or herein, such statements were made outside the scope of employment and not
16 by agents of Defendant and, thus, Defendant is not liable for such acts.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 23. To the extent Plaintiff is able to prove its claims, although such is not admitted
19 hereby or herein, Plaintiff had a duty to mitigate any damages to which it might have been
20 entitled, but failed to do so.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 24. Plaintiff fails to state facts or statutory authority sufficient to entitle it to recover
23 attorneys' fees. Plaintiff is not entitled to attorney's fees under California Civil Code section 52.1,
24 Civil Procedure Code section 1021.5, Government Code section 800, or any other statute.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 25. Plaintiff fails to state facts sufficient to constitute grounds to grant the costs of suit
27 incurred herein or for any other relief.

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1 TWENTY-SECOND AFFIRMATIVE DEFENSE

2 26. Defendant reserves the right to amend this Answer to assert additional affirmative
3 defenses and to supplement, alter or change the Answer and defenses upon revelation of more
4 definitive facts, and upon the undertaking of discovery and investigation in this matter.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Defendant respectfully prays for relief as hereinafter set forth:

- 7 1. That all relief requested in the First Amended Complaint be denied with prejudice;
8 2. That Plaintiff take nothing by its action;
9 3. That judgment be entered in Defendant's favor;
10 4. That Defendant be awarded all costs of suit, including reasonable attorneys' fees; and
11 5. Such further and other relief as the Court deems just and proper.

12 DATED: August 6, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

13
14 By: 

15 Arthur A. Hartinger

16 Linda M. Ross

17 Jennifer L. Nock

18 Michael C. Hughes

19 Attorneys for Defendant City of San Jose

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

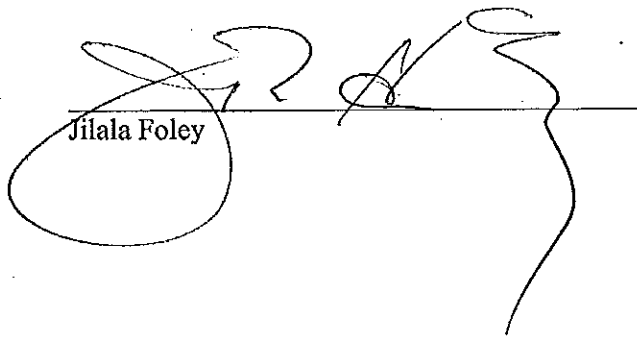
On August 6, 2012, I served true copies of the following document described as **ANSWER OF DEFENDANT CITY OF SAN JOSE TO THE FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 6, 2012, at Oakland, California.


Jilala Foley

SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125b</p>	<p><i>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</i></p> <p>AND</p> <p><i>Defendant, SAN JOSE FIREFIGHTERS, I.A.F.F. LOCAL 230 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p> <p>AND</p> <p><i>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</i></p> <p>AND</p> <p><i>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</i></p> <p>AND</p> <p><i>Defendant, CITY ASSOC. OF MANAGEMENT. PERSONNEL, IFPTE, LOCAL 21 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p> <p>AND</p> <p><i>Defendant, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton CARROLL, BURDICK & MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104</p>	<p><i>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</i></p> <p>AND</p> <p><i>Defendant, SAN JOSE POLICE OFFICERS' ASSOC. (U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</i></p>

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<p>Teague P. Paterson Vishtap M. Soroushian BEESON, TAYER & BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4051</p>	<p>Attorneys for Defendant, AFSCME LOCAL 101 MUNICIPAL EMPLOYEES FEDERAL AFSCME, LOCAL 101(U.S. Northern District Court Case No. 5:12-CV-2904-LHK)</p> <p>AND</p> <p>Plaintiff, AFSCME LOCAL 101 (Santa Clara County Superior Court Case No. 112CV227864)</p>
<p>Harvey L. Leiderman REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105</p>	<p>Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV226574)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)</p>

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